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No. 04-1337

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DOUGLAS N. PEARSON,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR REHEARING

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Petitioner Douglas N. Pearson herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari, entered on May 16, 2005, and (2) granting the petition. As grounds for this motion, petitioner states as follows:

> AS PEARSON'S CO-DEFENDANT AT TRIAL, AND DURING HIS APPEAL, HAS JUST HAD HIS SENTENCE REMANDED BY THIS COURT IN LIGHT OF *UNITED STATES V. BOOKER*, 125 S.CT. 738 (2005), AND, IN TURN, BY THE SEVENTH CIRCUIT COURT OF APPEALS, IT WOULD BE A MANIFEST INJUSTICE NOT TO REMAND PEARSON'S SENTENCE

As set forth in Pearson's petition for writ of certiorari, on June 20, 2002, following a four-month jury trial, petitioner was convicted of Conspiracy to Commit Wire Fraud under 18 U.S.C. § 371 (Count I) and Wire Fraud under 18 U.S.C. § 1343 (Count II). Pearson was tried with co-defendant Arthur M. Hawkins, both in their capacity as Exide Corporation officers, who was also found guilty of both counts. At a hearing held on December 20, 2002, Pearson was sentenced by the trial court to a prison term of 64 months, a two-year term of supervised release and a fine in the amount of $150,000. One day earlier, Hawkins was sentenced to 120 months' imprisonment, a three-year term of supervised release and a fine of $1 million.

On December 19, 2002, over objection, the trial court ordered Hawkins immediately remanded to the custody of the United States Marshal to begin serving his sentence. Pursuant to the trial court's order, on January 2, 2003, Pearson surrendered to the United States Marshal of the Southern District of Illinois to begin his sentence. Both men remain incarcerated at different federal correctional facilities.

On August 14, 2003, the Court of Appeals for the Seventh Circuit denied Pearson's and Hawkins' joint appeal. A copy of this decision, contained in petitioner's original Appendix, is reproduced hereto in the Appendix ("App.") at 4a-22a.

Both Pearson and Hawkins subsequently made separate applications to the trial court, the Seventh Circuit Court of Appeals and ultimately this Court to vacate their respective sentences and remand the matters for resentencing in view of the Court's holding in *Blakely v. Washington*, 124 S.Ct. 2531 (2004), and *United States v. Booker/Fanfan*, 125 S.Ct. 738 (2005).

Subsequent to Pearson filing his petition for writ of certiorari on or about April 6, 2005, the Seventh Circuit issued an Order on May 9, 2005 in the matter of *United States v. Hawkins*, 01 CR 30006-DRH, reprinted at App. 2a-3a, wherein the Circuit Court held that "[t]his case com[ing] to us on remand from the Supreme Court for further consideration in light of *United States v. Booker*, 125 S.Ct. 738 (2005) . . . we order a limited REMAND of Arthur M. Hawkins's sentence in accordance with *Booker* and [*United States v. Paladino*, 401 F.3d 471 (7th Cir. 2005)]." By Order dated May 13, 2005, reprinted at App. 1a, the trial court set forth a briefing schedule and offered the parties the opportunity to be heard at oral argument.

In Pearson's original petition, he highlighted for this Court the stark disparity—and inconsistency—in sentencing protocols as applied to his circumstances versus at least one other person convicted in the Seventh Circuit in an unrelated action, *see United States v. Shearer*, 379 F.3d 453, 454 (7th Cir. 2004), ***on the very same day*** as his June 20, 2002 conviction. Now Pearson is confronted with the unjust result of his co-defendant, Arthur M. Hawkins —the man with whom he sat on trial with for nearly four

months, who was sentenced and began serving that sentence just prior to him, and with whom he was coupled during their joint appeal—being permitted to submit argument to the trial court for resentencing in accordance with *Booker*, while he is denied the same right. Clearly, based on legal principles and for considerations espoused at far greater length in Pearson's original petition, the Court did intend for such a manifest inequity. For purposes of resentencing procedure, Pearson should stand in the same shoes and be given the same opportunities as his co-defendant Hawkins.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner Pearson prays that that this Court grant rehearing of the order of denial, vacate that order, grant the petition and reverse the Seventh Circuit's decision below.

Respectfully submitted,

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Dated: June 6, 2005

CERTIFICATE OF COUNSEL

I, Harold J. Ruvoldt, Jr., certify as follows:

1. I prepared this Petition for Rehearing of the Petition for Writ of Certiorari.
2. Pursuant to Rule 44.2 of the Supreme Court Rules, I certify that I have limited this Petition for Rehearing to intervening circumstances of a substantial; or controlling effect or to other substantial grounds not previously presented.
3. This Petition is presented in good faith and not for the purpose of delay.

Dated: June 6, 2005

Respectfully submitted,

/s/ HAROLD J. RUVOLDT, JR.

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